

THE TURNER ASSOCIATION

IBLA 84-651

Decided March 26, 1985

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease application. M-60512.

Affirmed as modified.

1. Oil and Gas Leases: Applications: Drawings

BLM may properly reject a simultaneous oil and gas lease application filed on behalf of an association where the applicant failed to disclose the identity of its members on Part B of the application form (Form 3112-6a (June 1981)) or a separate accompanying sheet, as required by notice published in the Federal Register in accordance with 43 CFR 3102.5 (1983).

APPEARANCES: Frederic D. Reed, Esq., Seattle, Washington, for appellant.

OPINION BY ADMINISTRATIVE JUDGE GRANT

The Turner Association has appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated May 23, 1984, rejecting its simultaneous oil and gas lease application, M-60512.

Appellant's lease application was drawn with first priority for parcel MT-235 in the September 1983 simultaneous oil and gas lease drawing. In its May 1984 decision, BLM rejected appellant's application in part because Part B of its application form (Form 3112-6a (June 1981)) did not disclose other parties in interest, specifically, the "members" of the association, as required by 43 CFR 3112.2-3. 1/ BLM also rejected appellant's application

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1/ In support of its holding, BLM quoted from an Aug. 19, 1983, Federal Register notice, 48 FR 37656 (Aug. 19, 1983), as follows:

"Pursuant to the final rulemaking of July 22, 1983 (48 FR 33648) . . . the Bureau of Land Management hereby gives notice that effective August 22, 1983, it will strictly enforce the provisions of amended § 3112.1-3 [sic], which pertain to the designation of other parties in interest. . . . Amended § 3112.1-3 [sic] requires that an applicant (including an association, partnership, or

because the application form, which was signed by B. L. Turner, did not disclose the relationship between the signatory (Turner) and the applicant (The Turner Association), as required by 43 CFR 3112.2-1(c) (1983). 2/

In its statement of reasons for appeal, appellant contends that BLM has previously accepted lease applications "substantially the same" as the one involved herein and that it was never notified of the "changes" made in 43 CFR 3112.2-3 by the August 1983 Federal Register notice, despite several calls to the BLM Montana State Office prior to filing its application. Appellant states that it complied with the instructions on the application form itself and supplemental instructions which it received from the Montana State Office after filing its application. Appellant notes that it is an association of "immediate family members," viz., B. L. Turner, Geraldine M. Turner, Jonathan F. Turner, and Fawn M. Turner.

[1] The May 1984 BLM decision concludes that failure to disclose the members of an association on a lease application or a separate accompanying sheet is a violation of 43 CFR 3112.2-3. That regulation provides, in relevant part, that: "Compliance with Subpart 3102 of this title is required. The applicant shall set forth on the lease application, or on a separate accompanying sheet, the names of all other parties who hold an interest (as defined in § 3000.0-5(k) of this title) in the application, or the lease, if issued." (Emphasis added.) The above-quoted passage of the Federal Register notice (see footnote 1, supra) omits the qualifying word "other" modifying the terms "parties who hold an interest" in the regulation at 43 CFR 3112.2-3,

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fn. 1 (continued)

corporation) filing a simultaneous oil and gas lease application must designate . . . the names of all parties who hold an interest . . . in the application . . . Failure by associations or partnerships to comply with this requirement shall result . . . in . . . rejection of the application." (Emphasis in original.)

2/ With respect to this ground for the decision, we note that by memorandum dated Oct. 18, 1984, the Under Secretary instructed the Board of Land Appeals to review such signatory cases for consistency with Instruction Memorandum No. 84-658, dated August 15, 1984. That memorandum provides, in relevant part, that:

"In light of the ANR Production Company decision, [ANR Production Co. v. Watt, Civ. No. 83-0375 (D. Wyo. Jan. 11, 1984)] all SOG [simultaneous oil and gas] applications filed on behalf of a corporation, association, or partnership that do not designate the relationship of the signatory to the applicant will not be deemed rejectable. This change in policy with regard to the acceptability of such applications, pursuant to 43 CFR 3102.4, applies only to situations in which the signatory is a member of the organization that constitutes the applicant, and not merely an outside party or an agent rendering services to the applicant. For example, a corporate officer of ABC Corporation need not designate his relationship to ABC Corporation when signing ABC's SOG application, nor need a partner or a member of an association, designate his relationship to the partnership or association respectively, when signing a SOG application filed on behalf of that partnership or association."

Accordingly, this ground for the BLM decision is not sustainable. See Corinth Partnership (On Remand), 83 IBLA 277 (1984).

when setting forth the disclosure requirements for partnerships and associations. Thus, the distinction between partners or members of an association and other parties in interest is obscured. However, the legal basis for the BLM decision is explained more fully by the following paragraph from the Federal Register notice, which was unfortunately omitted from the quote in the BLM decision.

After August 22, 1983, applications for simultaneously offered parcels received from associations, including partnerships, must be accompanied by a complete list of individuals who are members thereof. This requirement is authorized under 43 CFR 3102.5. By this notice, the Bureau of Land Management formally interprets and exercises its right of demand for this information at the time application is made. [Emphasis added.]

48 FR 37656 (Aug. 19, 1983). The notice plainly indicates that the rulemaking was an exercise of BLM's authority under 43 CFR 3102.5. The regulation at 43 CFR 3102.5 authorizes BLM to require an applicant to submit "additional information to show compliance with the regulations of this group and the Act," including those related to citizenship, acreage holdings, and prohibited arrangements. 3/ In order to aid BLM in determining whether the members of an association, as well as the association itself, have complied, BLM properly requires disclosure of the identity of such members pursuant to 43 CFR 3102.5. There is no intimation that such members are considered to be "other parties in interest," although the purpose of disclosure is the same, *i.e.*, to determine whether a party in interest is qualified to hold a Federal oil and gas lease. 4/ Compliance with the requirements of 43 CFR Subpart 3102, including 43 CFR 3102.5, is expressly required by the regulation at 43 CFR 3112.2-3. Moreover, 43 CFR 3112.5-1(a) provides that "[a]ny application determined by adjudication as not meeting the requirements of Subpart 3112 of this title shall be rejected." The Board has held that such a failure to disclose the members of an association requires rejection of a simultaneous oil and gas lease application. In Shaw Resources, Inc., 79 IBLA 153, 177-78, 91 I.D. 122, 135-36 (1984), we said:

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3/ We note that 43 CFR 3102.5 suggests a distinction between members of an association and other parties in interest. That regulation states that the certification of compliance applies to "the potential lessee, all other parties who hold an interest \* \* \* and all persons who are members of an association." Id.

4/ In this sense, the August 1983 Federal Register notice is merely a resurrection of the previous regulatory requirement that "[a]n association which seeks to lease shall submit with its \* \* \* application if leasing is in accordance with Subpart 3112 of this title \* \* \* (3) A complete list of all \* \* \* members." 43 CFR 3102.2-4(a) (1981). An applicant who failed to comply with this regulation properly suffered rejection of his application pursuant to 43 CFR 3112.6-1(b) (1981). Stephen A. Pitt, 57 IBLA 365 (1981). At the same time, 43 CFR 3102.2-7(a) (1981) required an applicant to set forth the "names of all other parties who own or hold any interest in the application" on the lease application or a separate accompanying sheet. This dichotomy between other parties in interest and members of an association has been preserved in the current regulatory scheme.

[W]here an applicant \* \* \* has failed to disclose all individuals in an association or partnership which has filed an application (see 48 FR 37656 (Aug. 19, 1983)), \* \* \* such applications are properly "rejected," priority is denied to any successful applications, and the filing fees are retained. \* \* \* All of these requirements are directly related to the Department's ability to police the simultaneous system to prevent fraud or abuse and those who fail to observe them properly suffer the consequences of their failure to comply.

The remaining issue presented is whether this is a "substantive" defect. In Conway v. Watt, 717 F.2d 512 (10th Cir. 1983), the court concluded that the Department could not reject an application, which was not dated, where the failure to date did not itself constitute evidence of fraud or other disqualification, characterizing the defect as "nonsubstantive." The court noted that if the Department was concerned whether an application had been signed and other qualifications satisfied as of a particular qualifying date, it could require an applicant to submit proof after the drawing. The court stated that the Department could not simply treat the failure to date as a per se disqualification.

We conclude that the failure to disclose the members of an association-applicant on a lease application or a separate accompanying sheet is a substantive defect, which requires BLM to reject the application. Although the identities of the members of the association receiving priority could be determined upon inquiry after a drawing, this is not a substitute for disclosure prior to the drawing. In light of the large number of partnerships and associations that participate in the simultaneous drawings, disclosure of partners or members in advance is required to guard against illegal multiple filings on the same parcel by an individual who is participating in and thus holding an interest in more than one partnership or association. Thus, the identity of the parties who hold an interest in all associations and partnerships participating in the drawing must be known, not just the identity of those who hold an interest in the successful drawee. Full disclosure for unsuccessful as well as successful applicants is necessary to protect the system against multiple filings in violation of 43 CFR 3112.5-1(b).

Appellant asserts ignorance of the August 1983 Federal Register notice. Despite the fact that BLM apparently never specifically informed appellant that it was required to submit the names of its members on its lease application or a separate accompanying sheet, appellant is deemed to have known what was contained in the notice since it was published in the Federal Register. 5/

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5/ In an affidavit dated June 8, 1984, B. L. Turner states that he telephoned the Montana State Office on Aug. 15 and Sept. 19, 1983, with regard to the "proper completion" of the application form and that: "I discussed in detail with an individual in the said office the manner of completion of the said form. At no time was there ever any written or oral indication that it was necessary to disclose on the form the persons who are the owners of The Turner Association." Appellant notes that it was informed by the Wyoming State Office that the policy of that office is to include a "flyer," with the instructions to potential applicants, reciting the requirement set forth in

44 U.S.C. § 1507 (1982); see Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified.

C. Randall Grant, Jr.  
Administrative Judge

We concur:

Will A. Irwin  
Administrative Judge

R. W. Mullen  
Administrative Judge

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fn. 5 (continued)

the August 1983 Federal Register notice. This policy is consistent with Instruction Memorandum No. 83-748, Change 1, dated Aug. 19, 1983, from the Director, BLM, to all state directors, which states: "In order to ensure that this requirement is made known to the affected applicants, notification is to be included by each State Office in the September 1983 Notices of Lands Available for Oil and Gas Filings." It is not clear whether the Montana State Office complied with this directive. Nevertheless, as noted above, appellant is deemed to have known of the requirement.

